Report on implementation of the Resale Right Directive 2001/84/EC

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PURPOSE: to present a report from the Commission on the implementation and effect of the Resale Right Directive (Directive 2001/84/EE).

BACKGROUND: the Resale Right Directive was conceived with **two major objectives** in mind: to "ensure that authors of graphic and plastic works of art share in the economic success of their original works of art" on the one hand and, on the other, to harmonise the application of the resale right across the EU.

At the time the Directive was agreed, 4 of the then 15 Member States did not apply the resale right in national law: Austria, Ireland, the Netherlands and the UK. These Member States enjoyed a transitional period to 1 January 2010 during which they could choose not to apply the resale right to the works of eligible deceased artists. These Member States, together with Malta, made use of this provision, and of the option to extend the derogation period for a further 2 years. **This derogation comes to an end on 1 January 2012**, at which point the Directive must be fully implemented in all Member States.

CONTENT : the report examines the impact of the Directive on the internal market and the effect of the introduction of the resale right in those Member States that did not apply the right in national law prior to the entry into force of the Directive. It pays particular attention to the position of the Community in relation to relevant markets that do not apply the resale right, assesses the role of the Directive in fostering artistic creativity, and reviews the situation with regard to the management procedures in Member States.

1) Effects of the Directive: the report notes that the global art and antiques market, including both fine and decorative art, was worth **EUR 43 billion in 2010**, a year when it returned to its 2008 level after a year of "crisis" in 2009 (when sales contracted to EUR 28 billion). **The EU had a global market share of 37% by value in 2010**, followed by the US (34%), and China (23%).

The resale right directly affects only trade in **contemporary and modern fine art** i.e. works by EU living artists, or by EU artists deceased within 70 years of sale. **Works subject to the resale right accounted for around EUR 2.1 billion in auction sales in 2010 globally**. In the EU these works accounted for 50% of the value of fine art auction sales in 2010, compared with 35% of sales in the US, 25% in Switzerland and 3% of sales in the rest of the world.

The EU lost global market share for auction sales of the works of living artists over the period

2005-2010, from 37% down to 30%, mainly as a result of the UK's loss of market share from

27% to 20%. The EU further lost market share in the sale of works of living EU artists over the period 2008 to 2010. At the same time, US market share has increased by 5% to 28%; and some Member States that implemented the resale right in 2006 for living EU artists also saw their market shares climb over this period (Austria, Netherlands, Italy).

Looking at the available data over a longer time frame, EU market share in the works of living EU artists has risen from 60% in 2002 to 66% in 2010, and the UK market share from 40% to 42%.

In light of the broader movements in the contemporary (and overall) art markets, there is currently insufficient evidence to indicate that the loss of EU market share for works of living artists over the period in question is directly attributed to the harmonisation of the resale right in 2006.

2) Displacement of sales: bearing in mind the expectation that unharmonised application of the resale right contributed to "displacement of sales" within the EU, the Commission sought to identify whether any trade diversion away from those Member States that introduced the resale right for the works of living artists the first time in 2006 and towards other Member States had arisen. It also tried to see whether those Member States which have derogation until 1 January 2012 appeared to have a comparative advantage in the sales of works of deceased artists.

The report shows that **art markets across the EU differ in their nature and make-up.** For example, while the UK has the highest EU market share by value of auction sales in works eligible for the resale right (64% in 2010), followed by France (12%) and Germany (5%), the greatest volume of transactions was in France (26%).

In all, some 65,000 auction transactions were eligible for the resale right in 2010, of which roughly two thirds sales of works of deceased artists, and one third sales of living artists.

Looking at both the value and the volume of auction sales of works by living artists over the period 2005-2010 **no clear patterns can be established that would indicate that trade diversion has systematically occurred within the EU away from those Member States which introduced the right for living artists in 2006.**

3) Factors affecting the development of art markets: the report notes that there are clearly **pressures** on European art markets, in all price ranges, and for both the auction and dealer sectors. The wider taxation system, including the application of VAT can play a significant role. Within the EU it is noted that VAT rates vary widely from 15% to 25%. The following factors have also been cited: (i) **rates of commission and administrative costs** including those relating to the administration of the resale right; (ii) art markets are susceptible to changes in taste, and to changes in perception of the investment value of art; (iii) the mobility of the art market, including the growing attraction of national and international art fairs in the dealer sector.

Furthermore, the **quality of the administration** of the resale right appears to vary considerably across the EU, bringing costs to art market professionals and artists alike. The burden can be particularly high for those at the lower end of the market who are proportionately more deeply affected by the costs of administering the right.

The Commission recognises also that in some Member States inefficient administration of the resale right presents a not insignificant burden on art market professionals and may also lead to unnecessarily high deductions from the royalties due to artists and their successors.

In view of these factors, the main conclusions of the report are as follows:

- in light of the economic significance of the sector, the Commission considers that **market developments should be kept under review**. The Commission will undertake a further reporting exercise and deliver its results in 2014;

- the Commission will also pursue its commitment to **persuading third countries to implement the resale right**;

- in light of the volume of transactions subject to the resale right, the European Commission also considers that there would be benefit in the **exchange of best practice at European level** with a view to managing and minimising the administrative costs in all Member States. To this end it intends to establish a Stakeholder Dialogue, tasked with **making recommendations** for the improvement of the system of resale right collection and distribution in the EU.

More broadly, the European Commission is concerned that **collecting societies** should operate to a high standard of governance and transparency with regard to their members and to commercial users, and will bring forward a proposal in this regard during 2012 to apply in equal measure to collecting societies administering the resale right.